

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

COSTCO WHOLESALE, INC.

Employer

and

Case No. 29-RC-9446

LOCAL 342-50, UNITED FOOD AND
COMMERCIAL WORKERS UNION,
AFL-CIO

Petitioner¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Richard Bock, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that the Employer, a State of Washington corporation, with its principal office and place of business located at 999 Lake Drive, Issaquah, Washington, is engaged in the retail operation of warehouse stores throughout the United States, including a store located at 976 Third Avenue, Brooklyn, New York, herein called the Third Avenue facility. During the

¹ The names of the Employer and Petitioner appear as amended at the hearing.

past calendar year, the Employer derived gross revenues in excess of \$500,000 from its retail operations. During the same period, the Employer purchased and received at its Third Avenue facility goods, products and materials valued in excess of \$5,000 directly from points located outside the State of New York.

Based upon the stipulations of the parties, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The Petitioner seeks an election in a unit of all employees, 9 or 10 in number, employed in the meat department at the Employer's Third Avenue facility. The Employer contends that the only appropriate unit is a storewide unit consisting of approximately 288 employees working at that location.

Nationwide, the Employer's business appears to be divided into various regional operations. Russ Miller, the Vice President of Regional Operations for one of these subdivisions, is responsible for overseeing the operation of 15 of the Employer's retail outlets in the states of New York and New Jersey. Each of these locations employ a general manager who reports to Miller. Reporting to the general manager of the Third Avenue facility are 3 "assistant" managers. One of them oversees the facility's front end operations (i.e. cashiers, etc.).

Another directs the store's administrative operations while the other is responsible for overseeing the "fresh" and "ancillary" departments. A second tier of managers reports to the three assistant managers. Among the managers reporting to the assistant manager for the fresh areas are a bakery manager, a deli manager, and the manager of the meat department, Robert Padilla.

Padilla is by and large responsible for the day to day direction of four cutters, and 5 or 6 wrappers and clean up employees. Although the Assistant Manager for the fresh and ancillary areas briefly speaks to Padilla or other meat department employees to ask them to cut certain items, it appears that it is primarily Padilla to whom meat department workers turn for their day to day guidance. Padilla's responsibilities include ordering product, scheduling employees, drafting cutting lists, preparing departmental reports, and directing and assisting employees in their cutting duties. It does not appear that he or other departmental managers are currently involved in the hiring process. Nor does it appear that he has the independent authority to discharge employees. Rather, final decisions regarding hiring and firing appear to rest with the general manager.

The meat department employees, four full-time cutters, one full time wrapper and 4 or 5 part-time wrappers and cleaners, work in a separate enclosed room. With the exception of some of the deli workers and managers, the remaining employees at the Third Avenue facility are barred from this area, and a sign on the door lists the individuals who may enter.

The Meatcutters

The duties of the four meat cutters include cutting red meat, wrapping product, assembling and inspecting the machinery in their department, and other duties incidental to the cutting process such as cleaning and disinfecting the blocks on which they work. All have had several years of experience cutting meat. The beef, lamb, veal and pork that they process is delivered in boxes that weigh up to 80 pounds and contain various sections of the carcass. These are then generally carved into smaller pieces.

Vinnie DiMartino, the lead cutter, testified in detail concerning the various aspects of the cutting process. The four cutters produce daily between 14 and 20 cuts of beef. It appears from DiMartino's testimony that the carving of boxed meat requires a knowledge of the various body parts these boxes contain and the proper procedures for cutting each of them.

Boxed beef may come in approximately 10 different varieties and DiMartino described in great detail the procedure by which some of these varieties are cut. It appears with regard to all red meat that is cut, the box is opened up, the meat is placed in a prep sink and is removed from the plastic bag in which it is contained. If the box just contains trimmings, the cutters use a boning knife to cut them into one and a quarter inch squares.

If the beef consists of more sizeable sections, these are generally placed, fat side down, onto a conveyor belt and run through a tenderizer. It appears that the procedures the cutters subsequently follow vary according to the part of the carcass that is being cut.

Thus, if the cutters are carving the top rounds (a portion of the leg), each round, weighing at least 25 pounds, is placed in a tub that is brought to the cutting table. The cutters then remove the veins from the round's underside. The beef is subsequently flipped over and the cutters remove a heavy nerve along with some fat. The cutters may then carve off the top portion of the round, and trim it so that it can be packaged and sold as a watermelon roast. The cutters proceed to cut along the face of the round, carving it into slices that may be sold as london broils or top round steaks. A particular muscle of the back end can be cut and used for a stew. Other portions of the back end may also be used for a stew or be cut into smaller pieces and subsequently ground.

The record contained similarly detailed descriptions of the procedure by which other portions of the animal are cut, such as the loin and shoulder clods as well as the cutting process as it relates to veal, lamb and pork. With regard to veal, lamb and pork, it appears that the cutters produce a relatively limited variety of cuts. However, the cutting procedure appears to differ according to the meat and the section that is being processed. It appears from DiMartini's description of the cutting process relating to these meats that cutters must be adept at removing certain bones, veins, muscles, nerves and fat. It further appears that more than one cut can be obtained from the same section of meat. Thus, as noted above, top rounds of beef can, at a minimum, be carved into london broils, top round steaks and watermelon roasts. A section of the bone-in pork loins that the cutters process can be partially deboned and cut into boneless spare ribs while other sections can be cut into rib pork chops and loin pork chops.

The machinery and tools the cutters use include a band saw, a bone dust scraper, two grinders, a Cuisinart food processor, a fat tester and various knives. The band saw is used to cut through bone and some of the more sizeable sections. This instrument is approximately six feet in height and contains a carriage through which the cutters push the meat. Because its use carries the risk of amputation, only the cutters may operate it. The bone dust scraper, a tool consisting of approximately three blades wound in a circular fashion, is used to remove any bone dust that has settled on the meat as a result of the sawing. The Employer provides the various knives the cutters use. However, cutters are allowed to use their own knives and at least one cutter does so.

The two grinders, like the tenderizer and the band saw, appear to be large machines into which both trimmings and tubes of meat are loaded. After the product has passed through the grinder a foot pedal is used to remove the approximately 10 pounds of meat that has adhered to the bottom of the machine. This meat is thrown back into the grinder and processed for at least another minute. A one pound sample is then tested for fat content. To test the meat for fat content, the employees run the sample through a Cuisinart food processor. The sample is subsequently weighed and placed in a fat tester and the fat content is tabulated.

It appears that the operation of the tenderizer and the grinder, along with the use of bone dust scrapers, requires little training. DiMartino testified that the operation of the grinder can be mastered in one to two weeks, and that of the tenderizer can be learned in 15 minutes. However, the operation of the band

saw appears to be a relatively skilled function. DiMartino testified that when using it for certain tasks, such as carving beef loins into steaks, it is necessary to angle the meat while pushing it through the saw.

Since the meat must be displayed in an attractive manner, the cutters may clean and chime the bone after cutting it. The failure to cut and display the meat in a presentable fashion can be costly.

Notwithstanding the apparent importance the Employer places upon this work, the Employer contends that the cutting of beef, lamb, pork and veal is relatively unskilled, and that in any event the cutters do not spend a great deal of time processing red meat. With regard to the latter, the Employer presented testimony that during Lent and other holiday periods, the meat department runs a “road show” during which the cutters and other meat department employees handle various types of seafood and interact with customers. It appears that during these road shows, which are held every Friday through Sunday, and on every weekend during certain holidays, the department displays the seafood in ice-filled tubs that are left outside the meat department. However, it is a cashier that is responsible for making sales and dealing with customers, and it appears that at most, certain meat department employees, including cutters, cover for her during breaks.

In further support of its contention that cutters spend relatively little time processing red meat, the Employer produced a sales report for the meat department covering a two week period. Miller asserted this period was representative of the amount of meat the Employer typically sells. Although it

appears that more than half of the meat that was sold arrived in boxes, much of the boxed meat, such as the subprimals, is not cut before it was sold. Some of the remaining product sold by the meat department consists of poultry, sausage and seafood that also does not require cutting. Miller estimated that 35% of the product sold by the meat department requires cutting. However, he acknowledged that this figure does not include the ground meat that was cut into trimmings before being ground. Moreover, it appears that the meat department employees are responsible for processing all the ground meat that the Employer sells. Thus, it appears that over 40% of the meat sold at the Third Avenue location is processed in some manner by the meat department before it is sold. Further, it appears from DiMartino's testimony that the cutters are not responsible for handling most of the seafood and poultry sold by the department. Rather, these items are generally wrapped and displayed by other meat department employees. Thus, the meatcutters appear to spend the majority of their time cutting or grinding the various red meats that the Employer sells. The Employer's witness, Regional Meat Supervisor Randy Mazzotti, estimated that cutters spend 50% of their time cutting red meat. However, Mazzotti is responsible for meatcutting operations at 15 locations, and clearly does not spend the majority of his time observing the meatcutters at the Third Avenue location as they perform their duties. DiMartino asserted that the cutting of red meat can occupy up to 7 hours of his 8 hour shift.

The Employer contends that even if the meat cutters spend a substantial portion of their time processing the Employer's product, when compared with

cutters working at other retail establishments, those employed by the Employer are relatively unskilled. Mazzotti testified that typical retail outlets sell a considerably greater variety of cuts than the Employer produces. He further asserted that most meat has been trimmed when it arrives, and that it is generally not necessary for cutters to angle meat while cutting it. While he claimed that it is the Employer's policy not to customize its cuts, DiMartino testified that the meat department provides customized cuts for the Employer's deli, and that it will, on rare occasions, customize cuts when certain customers insist upon it. The Employer's argument that the cutting duties exercised by these employees required relatively little skill was further undercut by Mazzotti's admission that the Employer holds seminars on proper cutting techniques and that these techniques would take approximately 6 months to master.² DiMartino asserted that learning the skills exercised by the cutters would require two to three years of training.

The Petitioner's assertion that the meatcutters are relatively skilled employees appears to be further supported by their rate of pay. The wages for cutters, as set forth in the employee handbook, range from \$9.00 per hour for newly hired meatcutters to \$17.70 per hour. However, lead cutter DiMartino testified that he is paid an hourly wage of \$18.45. Although the record did not reflect the precise wage rates received by the three other meatcutters, inasmuch

² The Employer's assertion in its brief that Mazzotti stated that these skills could be mastered in "less than" six months is not supported by the record. Its claim that meat department employees routinely take their grievances to the warehouse manager, assistant manager and Regional Vice President also has scant support in the record. Rather, when the Hearing Officer asked Miller if he could recall any instances in which they had done so, Miller responded, "I can't recall any at this point."

as they have all had several years of experience in the industry, it is likely that their wages fall close to the upper end of the progression. Truck drivers employed by the Employer earn no more than \$17.00 per hour, while the wage rates of service assistants and service clerks plateau at an hourly rate of \$14.50 and \$16.17 respectively. It appears that only some professional employees, such as licensed opticians, who can earn between \$19.17 and \$22.67 per hour, and possibly the pharmacy technicians, earn a higher rate of pay than that received by meatcutters.

The remaining meat department employees

The responsibilities of the five remaining employees in the meat department include wrapping, maintaining the case in which the meat and fish are displayed, and cleaning the meat department. Cecilia Swain wraps product, either by hand or with an automatic wrapper. Her duties also appear to include printing a bar code onto the label that is affixed to the package, and periodically inspecting the display case for product freshness. Domingo Figueroa runs the tenderizer and, like Swain, wraps product and maintains the display case. Steven Robalino displays the poultry, packages fish and tidies up the department. Edward Henon and Arnaldo Diaz spend the majority of their time cleaning the department and sanitizing equipment. They also prepare the fish and poultry for display and assist in case maintenance. It appears that all five employees are classified as service assistants whose pay can range from \$8.00 to \$14.00 per hour. The record further shows that hourly employees throughout the company receive the same holidays, sick leave, and other fringe benefits.

Contact and interchange

There is little contact or interchange between meat department workers and other store employees. With regard to the former, when certain supplies are needed by the meat department, such as a tray or shrink wrap, a forklift operator may retrieve them. A cashier or other service employee may, on rare occasion, venture into the department to return an item or request a label. The meat department prepares some cuts for the deli and some deli employees use a small prep sink in the meat department to prepare raw poultry on a spit before bringing it to the rotisserie area. There is a storage cooler outside the meat processing room where both meat department and deli employees warehouse their product. However, any contact that arises between meat department workers and other store employees appears to be incidental to the functions performed by meat department employees in the regular course of their duties.

With regard to interchange, there have been no temporary transfers into the meat department. Twice a year an employee from the department is selected at random to assist other store workers in performing an inventory of the warehouse. The employee will count product for a 6 hour period. When he is done, the remaining meat department employees take inventory for the final two hours of their shift.

With respect to permanent interchange, the record shows that in about December, 1999, one employee, Juan Cartegena, transferred from a part time position in the meat department to a full time position at the front end. In May

1999, Edward Henon was transferred from the merchandising department to his current position as a clean up person in the meat department, and in April 1998, about two weeks after his hire, Domingo Figueroa obtained his current position as a wrapper after having briefly worked the front end. However, these transfers were voluntary in nature. Each employee applied for the position he obtained after a notice concerning the position's availability was posted at the facility.³

Analysis

When the Board first began examining meatcutter units in the retail industry, meat cutters generally carved the entire carcass into primal or subprimal parts and frequently customized their cuts. The work involved a significant amount of deboning and trimming, and meatcutters were often required to undergo formal apprenticeship programs. As a result of this specialized training, the Board typically found appropriate separate units of meatcutters, and in Big Y Supermarkets, 161 NLRB 1263, 1268 (1966) the Board asserted that such units could be deemed presumptively appropriate. As boxed meat replaced entire carcasses as the type of meat customarily delivered to establishments, it became possible to process the product without exercising the full panoply of meatcutting skills that cutters had mastered in the past. In several cases during the 1970s, 80s and 90s the Board found that in view of the transition to the use of boxed meat at retail establishments, the separate unit presumption was no longer applicable. Accordingly the Board dismissed several

³ The Employer's assertion that Henon and Figueroa are now "former meat department employees" who have been transferred out of the meat department has no support in the record.

petitions seeking elections in such units, or directed elections in larger units.⁴ In Scolari's Warehouse Markets, Inc.,⁵ the Board concluded that its approach in these more recent cases had been overly restrictive, and that it had failed to thoroughly examine the work meatcutters performed and the degree of skill required to perform it. While the Board found that the separate unit presumption was not applicable to the meatcutters at issue therein, it concluded that it would be nonetheless necessary to analyze the skills these employees exercised, along with other traditional community of interest factors, to determine whether a separate unit of meat department employees was appropriate. In Scolari's and in subsequent cases the Board has paid particular attention to the following factors when determining the appropriateness of a unit of meat department employees: (1) whether a substantial portion of the Employer's meat department business involves boxed meat; (2) whether the continued application of specialized meatcutting skills is necessary to process the meat; (3) the training required to perform their work; (4) the percentage of the unit that is engaged in skilled meatcutting work; (5) whether the meat department employees are separately supervised; (6) the degree of interchange between meat department employees and other store personnel; and (7) the wages of meat department workers as compared to other employees. Wal-Mart Stores, Inc., 328 NLRB No. 126 (1999); K Mart Corporation, 323 NLRB 582 (1997).

⁴ Copps Food Center, 301 NLRB 398 (1991); Hall's Super Duper, 281 NLRB 1116 (1986); Ashcraft's Market, 246 NLRB 471 (1979).

⁵ 319 NLRB 153 (1995).

Applying each of these factors to the instant case, I find appropriate the unit sought by the Petitioner. It appears from the limited information provided by the Employer that the majority of the product sold by the department arrives at the facility as boxed meat. Although some of this meat is not cut, it appears that most if not all the boxed meat that arrives is handled in some way by meat department employees. Meat that is not cut appears to be ground and/or packaged before being placed on display. Assuming that the sales report provided by the Employer is representative of meat sales typically, the percentage of product that is actually cut (35%) is significant, and it appears that the meatcutters employed by the Employer spend the majority of their time cutting boxed meat.⁶

It also appears that the continued application of traditional meatcutting skills is necessary to perform the work. It is clear that cutting the Employer's product requires a knowledge of various sections of the carcass, the various cuts that can be produced from each of them, the type of meat (i.e. lamb, beef, veal or pork) that is being carved, and the procedures by which each section is processed. Although they produce fewer cuts than most retail establishments, the Employer's meatcutters must be adept at removing certain veins, nerves, bones and fat. The Board has found that the production of custom cuts along with the use of a band saw, the ability to angle meat when it is cut, and the ability to chime bones in order to give the product a more attractive appearance, involve

⁶ In Wal-Mart, 26.4% of the meat sold required cutting, not 57.4% as the Employer asserts in its brief. Estimates as to the amount of time meatcutters in Wal-Mart spent carving meat ranged from 10% to 90%.

the exercise of traditional meatcutting skills.⁷ The failure to properly carve and display the various cuts the Employer sells can be costly.⁸

It appears undisputed that considerable training is required to acquire the skills that the meatcutters in the petitioned-for unit exercise. All the meatcutters working at the Third Avenue facility have several years of experience in the industry. Mazzotti estimated that six months of continuous training would be required for a new hire to efficiently complete the tasks he is called upon to perform, and DiMartino placed this estimate at two to three years. The wages the meatcutters enjoy appears to reflect this skill level.⁹

Moreover, nearly half of the unit engages in skilled meatcutting work, a proportion the Board has deemed considerable.¹⁰

The meat department employees are, for the most part, separately supervised on a day to day basis, and they have little interchange or contact with other store personnel. The transfers that have taken place over the last few years have been both permanent and voluntary. The Board accords little weight

⁷ K-Mart, supra at 587.

⁸ In its brief, the Employer asserts that its sales reports for the week ending March 20, 2000, shows that 1.25% of the meat that is sold at the Third Avenue facility requires the use of a band saw. These figures may be misleading. DiMartino testified that the Employer's Third Avenue facility produces meat in high volume. Among the items cut with a band saw are bone-in pork and T-bone steaks. DiMartino also testified that each week the Employer sold about 60 cases of bone-in pork that required the use of a band saw. Thus, even assuming that this constitutes a small percentage of total sales, the amount of bone-in pork processed is not insignificant. With regard to T-bone steaks, DiMartino stated that the Employer had recently been given little meat to cut into steaks "because of the pricing." (Tr. 102). Thus it is not clear that the sales of T-bone steaks for the week ending March 20 were representative of the Employer's typical sales volume in this area. In any event, the record shows that the use of the band saw is not the only function performed by meatcutters that requires skill.

⁹ Experienced meatcutters receive approximately the same wage rate as that enjoyed by the meatcutters in K-Mart, who earned between \$17.70 and \$17.90 per hour.

¹⁰ In K Mart 25% of the unit engaged in skilled meatcutting work.

to such transfers as they do not reflect a need on the part of the Employer to shift its employees between departments.¹¹ The meat department employees work in an enclosed restricted area. This area can be analogized to a factory with heavy machinery (i.e. a tenderizer with a conveyor belt, a band saw and two grinders) at which production continually takes place while product is sold outside.

Because the wrappers and cleaners work closely with the meatcutters, sometimes assisting them in tenderizing and grinding the Employer's product, and have little contact with other store workers, it appears appropriate to include them in the same unit. Wal-Mart Stores, supra.

In view of the above, in particular the significant amount of time the Employer's meatcutters spend exercising traditional meatcutting skills, their separate day to day supervision, and the limited contact and interchange they have with other store employees, I find that they, along with the wrappers and cleaners, have a community of interest that is separate and distinct from that of the other employees employed at the Third Avenue facility.

Accordingly, I find the following unit appropriate for the purposes of collective bargaining:

All meat department employees including meatcutters, meat wrappers, cleaners and other service assistants working in the meat department excluding all other employees, guards and supervisors as defined in the Act.

¹¹Bud's Thrift T-Wise, 236 NLRB 1203, fn. 6 (1978); Deaconess Medical Center, 314 NLRB 677, fn. 1 (1994); First Security Services Corp., 329 NLRB No. 25, fn. 5 (1999); AVI Food Systems, 328 NLRB No. 59 (1999).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 342-50, United Food and Commercial Workers Union, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the issuance of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before April 28, 2000. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to

an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by May 5, 2000.

Dated at Brooklyn, New York, this 21st day of April, 2000.

/S/ ALVIN BLYER

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